

DEVILS LAKE SIOUX TRIBE LAND TRANSACTIONS

HEARING
BEFORE THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS
FIRST SESSION
ON
S. 503
TO AUTHORIZE THE PURCHASE, SALE, AND EXCHANGE OF
LANDS BY THE DEVILS LAKE SIOUX TRIBE OF NORTH
DAKOTA

SEPTEMBER 22, 1981
WASHINGTON, D.C.



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(II)

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DEVILS LAKE SIOUX TRIBE LAND TRANSACTIONS

SEPTEMBER 22, 1981

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 5302, Dirksen Senate Office Building, Senator Mark Andrews (acting chairman) presiding.

Present: Senators Andrews, Melcher, and Burdick.

Staff present: Timothy C. Woodcock, staff director; Peter S. Taylor, general counsel; and Mary Jane Wrenn, staff attorney.

Senator ANDREWS [acting chairman]. The hearing will come to order.

We are here this morning to receive testimony on S. 503, a bill to authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of North Dakota, and for other purposes.

S. 503 would allow the Devils Lake Sioux Tribe to consolidate land ownership patterns within the reservation to maximize tribal utilization of the land base.

The bill would allow the Secretary of the Interior to purchase, exchange, acquire by gift or relinquishment, land within the reservation for either the tribe or individual tribal member and accept any transfer of title from either the tribe or individual tribal member for land within the boundaries of the reservation in trust for the tribe or individual.

The bill would also allow the Secretary to sell or exchange any tribal or individual trust land provided that, in the case of a sale, trust land of equal value or area be acquired simultaneously and, in the case of exchanges, that the land values be equal or equalized by payment of money.

Any such acquisition, sale, or exchange of land for the tribe would require the request of the authorized tribal governing body, subject to the tribal constitution.

S. 503 would restrict inheritance of trust property to members of the Devils Lake Sioux Tribe, provided that the tribe purchase such interests at the fair market value.

I would like to take a moment to welcome all of you to today's hearing, especially my distinguished colleague, Senator Burdick, and the members of the Devils Lake Sioux Tribal Council who have traveled from North Dakota to be with us this morning.

Presenting testimony today will be Senator Burdick, representatives from the Department of the Interior, members of the Devils Lake Sioux Tribal Council, and the attorneys for the tribe.

Before we begin this morning, I would like to read into the record a letter which I received from Governor Allen Olson of North Dakota, supporting S. 503.

The Governor writes:

DEAR SENATOR ANDREWS: I have viewed Senate Bill 503 in the form introduced by Senator Quentin N. Burdick on behalf of the Devils Lake Sioux Tribe. It is understood that this bill will come on for hearing before the Senate Select Committee on Indian Affairs, which you chair, on Tuesday, September 22, 1981. I wish to express my support for the purposes of the bill.

This bill which authorizes the purchase, sale and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation is in keeping with the State's long standing good neighbor policy with the Indian tribes.

The efforts to consolidate tribal land ownership in order to realize maximum utilization of the reservation land base is a responsible course of action which the tribe has undertaken.

I ask that you communicate my views on this matter to your colleagues at hearing on this matter.

Sincerely,

ALLEN I. OLSON, *Governor.*

At this point, without objection, I will place a copy of S. 503 in the hearing record.

[The bill follows:]

97TH CONGRESS
1ST SESSION

S. 503

To authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 19 (legislative day, FEBRUARY 16), 1981

Mr. BURDICK introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

A BILL

To authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, North Dakota, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. (a) The Secretary of the Interior is author-
4 ized to—

5 (1) purchase with any funds, acquire by gift, ex-
6 change, or relinquishment, any land, or any interest
7 therein, or any improvements thereon, situate within
8 the boundaries of the Devils Lake Sioux Reservation

1 for the Devils Lake Sioux Tribe or individual tribal
2 members.

3 (2) sell or approve sales of any tribal or individual
4 trust land, or any interest therein, or any improve-
5 ments thereon, situate within the boundaries of the
6 Devils Lake Sioux Reservation: *Provided*, That new
7 trust land of approximate equal area or value is ac-
8 quired simultaneously with each such sale; and

9 (3) exchange any tribal or individual trust land, or
10 any interest therein, or any improvements thereon, for
11 any land situate within the Devils Lake Sioux Reser-
12 vation: *Provided*, That the land values involved in such
13 an exchange are equal or equalized by the payment of
14 money.

15 (b) The General Services Administrator shall transfer to
16 the Secretary of the Interior any land, or any interest there-
17 in, or any improvements thereon, situate within the Devils
18 Lake Sioux Reservation, declared to be excess property as
19 defined in section 3 of the Federal Property and Administra-
20 tive Services Act of 1949 (40 U.S.C. 472(e)).

21 SEC. 2. The Secretary of the Interior shall accept any
22 transfer of title from the Devils Lake Sioux Tribe, or any
23 individual tribal member, for any land or any interest therein,
24 or any improvements thereon, with the boundaries of the
25 Devils Lake Sioux Reservation, and shall take title to such

1 property in the name of the United States in trust for the
2 Devils Lake Sioux Tribe, or the individual tribal member.

3 SEC. 3. The acquisition, sale, or exchange of lands for
4 the Devils Lake Sioux Tribe made under this Act shall be
5 made only upon the request of the authorized governing body
6 of the Devils Lake Sioux Tribe, subject to the limitations and
7 procedures of the tribal constitution.

8 SEC. 4. Notwithstanding any other provision of applica-
9 ble law, the title to any land, or any interest therein, or any
10 improvements thereon, acquired under this Act shall be ac-
11 quired in the name of the United States in trust for the
12 Devils Lake Sioux Tribe or the individual tribal member, and
13 such property and its use shall be nontaxable and held free of
14 all charge or encumbrance whatsoever.

15 SEC. 5. Money or credits received or credited to the
16 Devils Lake Sioux Tribe or any individual tribal member,
17 from the sale or exchange of trust land, or any interest there-
18 in, or any improvements thereon, under this Act, may be
19 used only for the purpose of purchasing or acquiring property
20 under this Act and shall be deposited in a special account
21 under the control of the Secretary of the Interior or his duly
22 authorized representative.

23 SEC. 6. Any individually owned trust or restricted land,
24 situate within the boundaries of the Devils Lake Sioux Res-
25 ervation, may be leased by the Indian owners to the Devils

1 Lake Sioux Tribe or its subordinate organizations with the
2 approval of the Secretary of the Interior for public, religious,
3 educational, recreational, residential, or business purposes,
4 including the development or utilization of natural resources
5 in connection with operations under such leases, for grazing
6 purposes, or for those farming purposes which require the
7 making of a substantial investment in the improvement of the
8 land for the production of specialized crops, as determined by
9 the Secretary of Interior. Any such lease shall be for a term
10 of not more than ninety-nine years, except a lease of land for
11 grazing or farming purposes which shall be for a term of not
12 more than ten years. Any lease for public, religious, educa-
13 tional, recreational, residential, or business purposes, except
14 a lease the initial terms of which extends for more than
15 twenty-four years, may with the consent of both parties, in-
16 clude provisions authorizing its renewal for one additional
17 term of not more than twenty-five years. Any such lease or
18 renewal shall be made under the terms and regulations pre-
19 scribed by the Secretary of Interior.

20 SEC. 7. (a) A person who is not an enrolled member of
21 the Devils Lake Sioux Tribe shall not be entitled to receive
22 by devise or inheritance any interest in trust or restricted
23 land within the Devils Lake Sioux Reservation or within the
24 area ceded by the treaty of February 19, 1867 (15 Stat.
25 505), if, while the decedent's estate is pending before the

1 examiner of inheritance, the Devils Lake Sioux Tribe pur-
2 chases the interest in trust or restricted land by paying to the
3 Secretary of the Interior on behalf of such person, the fair
4 market value of such interest as determined by the Secretary
5 after appraisal.

6 (b) On request of the Devils Lake Sioux Tribe, the ex-
7 aminer of inheritance shall keep an estate pending for not
8 less than two years from the date of decedent's death.

9 (c) When a person who is prohibited by subsection (a)
10 from acquiring any interest by devise or inheritance is the
11 surviving spouse of the decedent, a life estate on one-half the
12 interest acquired by the Devils Lake Sioux Tribe shall, on
13 the request of such spouse, be reserved for that spouse and
14 the value of the life estate so reserved shall be reflected in
15 the appraisal of the Secretary of the Interior under subsec-
16 tion (a).

17 SEC. 8. The provisions of section 7 of this Act shall
18 apply to all estates pending before the examiner of inheri-
19 tance on the date of this Act, and to all future estates, but
20 shall not apply to any estate heretofore closed.

21 SEC. 9. The Secretary of the Interior is authorized to
22 take such action as may be necessary to carry out the pur-
23 pose of this Act.

Senator ANDREWS. We will now begin receiving testimony on S. 503.

Senator Burdick, would you like to begin?

**STATEMENT OF QUENTIN N. BURDICK, U.S. SENATOR FROM THE
STATE OF NORTH DAKOTA**

Senator BURDICK. Thank you, Mr. Chairman.

I, too, would like to welcome the representatives from the Devils Lake Sioux Tribe who are here in the committee room this morning. I am sure they will be able to aid us considerably in determining the situation before us.

The Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, located in North Dakota, and I, have been working together to improve the standard of life and opportunities for Indian people.

I have watched the Devils Lake Sioux Tribe grow in responsibility and maturity. It is one of the pleasures of public life to be able to watch an organization grow and increase in its accomplishments.

When I first came to the Congress more than 20 years ago, the Devils Lake Sioux Tribe looked very little like it does today.

The Devils Lake Sioux Tribe has grown into a tribal organization which has made real progress in improving the lot of Indian people on the Devils Lake Sioux Reservation. Greater opportunity for employment has come through the tribally owned Devils Lake Sioux Manufacturing Corp. The tribe has also been working hard on improving its farming operations.

I have seen these accomplishments firsthand and know the hard work that it took to come this far. Now I am pleased once again to join with the Devils Lake Sioux Tribe in another effort to assist the tribe in becoming more effective in their pursuit of the betterment of Indian people.

Senate bill 503 is another step in this process of growing for the tribe. The central purpose of the bill is to consolidate land ownership patterns within the reservation in order to maximize utilization of the reservation land base.

The bill would authorize the Secretary of the Interior to acquire and hold in trust for the Devils Lake Sioux Tribe land within its reservation and to sell or exchange tribal or individual trust land in situations in which new trust land of approximately equal area or value is acquired.

The bill would also authorize the tribe to enter into long-term leases of individually-owned trust or restricted land within the reservation and to acquire any interest in trust or restricted land within the reservation which a person not an enrolled member of the Tribe is to receive by devise or inheritance.

Senate bill 503 is needed to clear up a very cumbersome procedure. Presently the tribe can acquire land within its reservation but the title may not be taken in trust without congressional authorization.

Tribal land cannot be sold or exchanged without special legislation in each case and leases of individually-owned trust or restricted land are limited to relatively short periods.

Broader acquisition and disposal authority are needed to consolidate the land holdings into larger, more economically usable blocks and

to prevent further reduction of individual Indian-owned land within the reservation through inheritance of interests in trust lands by non-Indians.

Land use by property owners or leaseholders for farming purposes has become increasingly impractical because individually owned trust land is steadily being inherited by an even larger number of heirs.

Longer term lease authority is needed to deal with the fractionated land holdings to develop both tribal and individually held land on advantageous terms.

The tribe, as will be explained in further testimony, has developed a land purchase and consolidation program, but the plan cannot be carried out without enabling legislation.

The bill provides that "any funds" may be used by the Secretary to acquire the land, thus allowing the use of tribal funds.

The proposals included in this bill are not unique and are comparable to that given to other Indian tribes. A notable comparison in the same geographic area is the Lake Traverse Reservation, Public Law 93-491, 88 Stat. 1468.

I want to emphasize most strongly that the enactment of this bill will involve no cost to the Federal Government. The only effect of the bill will be to allow the Devils Lake Sioux Tribe to operate in a more effective and efficient manner.

This type of legislation should be greeted warmly where there is no additional cost and the only result is more effective government.

I am also proposing the attached amendments to my prepared statement to the bill, which further strengthen the purpose of the legislation.

I would ask that these be placed in the record at this point.

Senator ANDREWS. Without objection, so ordered.

[The amendments follow:]

AMENDMENTS TO SENATE BILL 503

SECTION 1. (a) The Congress finds that—

(1) the Devils Lake Sioux Tribe, of the Devils Lake Sioux Reservation, North Dakota, is vigorously pursuing its goal of self-determination through development of manufacturing and farming enterprises; and

(2) continued existence of the Devils Lake Sioux Reservation, North Dakota, as a permanent homeland of the Devils Lake Sioux Tribe, requires that the Secretary of the Interior have authority to consolidate and increase the trust land base in the reservation for the Tribe and individual tribal members and to prevent further loss of trust land, all as a necessary foundation for continued tribal self-determination.

SEC. 9. The Devils Lake Sioux Reservation, North Dakota, is hereby confirmed as the permanent homeland of the Devils Lake Sioux Tribe.

Senator BURDICK. The amendments clarify congressional intent of the bill to strengthen the Devils Lake Sioux Tribe's efforts at self-determination.

The language contained in the amendments places Congress squarely behind the principle of helping Indian tribes maintain their progress toward economic viability and their fight to survive as a meaningful Indian entity into the 21st century by being able to maintain a land base.

The bill also reflects our experience in North Dakota where non-Indians and Indians alike have tried to treat each other as good neighbors.

Enactment of Senate bill 503 by the 97th Congress will serve to strengthen self-determination of the Devils Lake Sioux Tribe by giving the tribe the benefit of the legal ability to acquire, sell, and exchange land inside the boundaries of the reservation in the same manner as other American Indian tribes under the Indian Reorganization Act of 1934 or under a special statute providing for an individual tribe.

Enrolled tribal members will also have legal authority to acquire, sell, and exchange individually owned trust land as well as the ability to lease it to the tribe in terms of up to 99 years.

Senate bill 503 will enable the tribe to eliminate the fractionated heirship problem of individually owned trust land inside the reservation.

In giving the tribe such powers to strengthen its land base, Congress will affirm the Federal national Indian policy of self-determination and provide the tribe with a much needed tool for its future agricultural, economic, and social progress.

Mr. Chairman, this legislation is greatly needed. It does not take any rights away from anybody. It eliminates redtape. It allows the reservation and its officers to retain this land. It makes commonsense. I hope it will be received favorably.

Senator ANDREWS. Thank you, Senator Burdick.

I might ask your views on one thing.

During the last 24 hours, the committee staff, my staff—and I understand your staff as well—have been contracted by members of the Devils Lake Sioux Tribe who have questions about section 7 of the bill.

—Prior to yesterday, there was no hint of dissatisfaction with any part of the bill.

I asked our committee staff to have the callers submit written comments to us for inclusion in today's record so that they would be protected and their views will be made known to the committee for consideration.

Without objection, those will be placed in the record at this point.

[The communications follow:]

REC'D OCT 2 1981

Richard H. Pinkston
Box 7
St. Michaels, N.D.
58320

William S. Cohen
Chairman
Senate Select Comm.

Dear Mr. Cohen,

THIS LETTER IS IN REFERENCE TO
SENATE BILL 503, SUBMITTED BY SENATOR
Bundick:

I OPPOSE THIS BILL BECAUSE:

THIS BILL WAS NOT PRESENTED TO
THE PEOPLE OF THE DEVILS LAKE SIOUX
TRIBE, AT DISTRICT MEETINGS OR GENERAL
ASSEMBLY, FOR EXPLANATION, COMMENT
OR CONSIDERATION. THE TRIBE COUNCIL
DELIBERATELY FAILED TO PRESENT THIS BILL
TO THE PEOPLE BECAUSE OF SECTION 7,
SUBSECTIONS A, B, & C. THIS SECTION, IN
FULL, IS DISCRIMINATING AND BASED UPON
THE SPONSORS OF TRIBAL EXECUTED MEMBERS.
I UNDERSTAND THIS BILL TO BE UNCONSTITUTIONAL.

And imposing upon my rights as to
How & when I may sell my property.

I, for one, have worked hard for
many years to acquire what I now
have. I've chosen my partner to
share in these small blessings,
only to have a discriminating and
biased bill to take all this away
from my spouse because she is not
enrolled with this tribe. If this
bill should become an act, I have
no choice but to apply for patent &
fee, so that my spouse may acquire
that which we've worked so hard for.

Richard M. Spuckler
Tribal Member.

P.S.

Within our Tribal Constitution & By Law,
Governmental Authority, Article VI, Sections 9 & 12,
Council has the power to purchase, sell, or
exchange Tribal lands.

TESTIMONY

Richard M. Jackson
Box 7
St. Michaels, N.D.
58320

SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS
(SENATE BILL 503)

I'm Richard M. Jackson, 414
Sioux, ENROLLED MEMBER OF THE DEVILS
LAKE SIOUX TRIBE. THIS IS MY STATEMENT
CONCERNING BILL 5-503.

I oppose Bill 5-503, OR ANY
BILL OF LIKE LANGUAGE WHICH IS IN DIRECT
VIOLATION OF MY CIVIL RIGHTS.

I STRONGLY OBJECT TO SECTION 7,
(AND ALL SUBSECTIONS) OF BILL 5-503. BECAUSE
THIS SECTION IS BIASSED AND DISCRIMINATE
AND IN DIRECT CONTRARY TO THE LAWS PASSED
BY CONGRESS GUARANTEEING CONSTITUTIONAL
AND CIVIL RIGHTS TO ALL ITS CITIZENS.

THIS SECTION OF 5-503 IS OPPRESSING
MY RIGHT OF WILL. THE RIGHT TO LEAVE A
LAST WILL AND TESTAMENT TO MY SPOUSE
WHOM IS NOT AN ENROLLED MEMBER OF THE
TRIBE. THIS BILL DISCRIMINATES AGAINST ME
BECAUSE I WILLED OUTSIDE OF THE TRIBAL
MEMBERSHIP, AND IS BIASSED TOWARD MY SPOUSE
BECAUSE SHE IS NON-INDIAN.

BEST COPY AVAILABLE

IT APPEARS ME TO BELIEVE THAT A
U.S. SENATOR WOULD SPONSOR A BILL THAT
ENCOURAGES DISCRIMINATION AND VIOLATES
THE CIVIL RIGHTS OF HIS CONSTITUENTS.

IF THIS BILL SHOULD BECOME LAW,
I WOULD HAVE NO CHOICE BUT TO APPLY FOR
PATIENT-FEE ON MY PROPERTY. THIS WOULD BE
TO INSURE THAT MY SPOUSE RECEIVES WHAT
IS DUE & EQUITABLY HER'S.

IN SUMMATION, THIS BILL WOULD BE
ACCEPTABLE ONLY WITH THE COMPLETE
REMOVAL OF SECTION 7 AND ITS SUBSECTIONS.

THANK YOU FOR LISTENING

Solomon Sherman

Richard M. Gunkle
Francis Olson
Michael Gunkle
Lewis Goodhouse
Michael J. Thompson Sr.
Gloria Green
Marie Baker
Irene Lavanaugh
James Thompson
Mary M Thompson
Mary Jane Thompson

To Senator Quentin Burdick
401 Russell Office Bldg.
Washington D.C. 20510

September 31 1981
Fort Totten
North Dakota 58335

Hon. Senator Burdick

Referring Senate

The tribal council has not presented and properly explain
this (Bill 503) to people of the Devils Lake Sioux Tribe for
their comments, objection or approval.

We never saw any thing about this Bill til Saturday
morning Sept 19, 1981. A lady was passing copies of
the Bill which was the first time we saw it.

A lot of people came to me with questions about it but
I didn't know any thing about it, especially

Section 7 of 503 - A lot of people are married to
non-enrolled members of our Sioux enrolled members.

and they feel it is definitely objectionable, discriminating
and unconstitutional, (Sec 7) Maybe there is lot of
misunderstanding. I don't really know, this is why
our tribal council should and must go to their Indian
people explain and listen to the people,

There is a lot of questions concerning the Bill 503
All I can say is, what is going on

Sincerely
Lewis Woodhouse
Fort Totten
North Dakota 58335

Senator ANDREWS. We are going to have to take a hard look at section 7. We want to give the other side an opportunity to be heard and I am sure you agree with that. But I wonder if you have any comments on the opposition to section 7 that has come up or any suggestions as to what might be done.

Senator BURDICK. Excuse me, Mr. Chairman. Let me get a copy of section 7.

Senator ANDREWS. Section 7 has to do with the transmission through inheritance of these lands.

Senator BURDICK. I was not aware of any challenge, but let me just take a moment to look at it, Mr. Chairman.

Does the chairman recall what the sense of the objections were?

Senator ANDREWS. It had to do with the inheritance of this land ultimately and to whom it could be transmitted.

The committee staff checked with your staff and your staff told them that they had had the same kind of comments in the last day or two from people out there.

It has to do largely with the Indians married to non-Indians. That is a question of concern, as I understand it.

Senator BURDICK. That is an integral part of the bill. As you know, under years and years of ownership, the land has been in the possession of some Indian people who own tiny parcels of land. There has to be some machinery to consolidate those portions.

I cannot imagine what the objections would be unless some people wanted to sell their fraction of ownership outside the tribal area. That is the only thing I can think of and that is exactly what we do not want to do.

At first blush, I cannot see any objections.

Senator ANDREWS. As I look at section 7—and I am not an attorney—it is not very detailed. The concern that was expressed by the staff is that it might cut the children out of the opportunity to inherit land.

In any event, the direction I gave our staff was to tell the people who were calling to submit written comments so we would have it here and we can assure the members of the Tribal Council and their attorneys that we will take a look at it and make sure that these comments are received and acted upon.

We will get back—that is, one of the staff members of the Select Committee will be out in the tribal area in the next week or so. By then, we should have further comments so that we are sure we can resolve that.

Senator BURDICK. As I read the entire bill, the intent is not to deprive anybody of any interest, but simply to consolidate it and to permit the fractionated interests to be used economically.

Senator ANDREWS. As you and I both know so well, many times these comments come in and they are based on misinformation and misinterpretation out in the field. But that is why I suggested that they direct these comments in writing so we can respond.

Our next witness this morning is Kenneth L. Payton, Acting Deputy Assistant Secretary for Indian Affairs, U.S. Department of the Interior.

Mr. Payton is accompanied by Tim Vollman, Assistant Solicitor for Indian Affairs.

STATEMENT OF KENNETH L. PAYTON, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY TIM VOLLMAN, ASSISTANT SOLICITOR FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. PAYTON. Thank you, Mr. Chairman, and Senator Burdick.

I am pleased to have the opportunity to present the views of the Department of the Interior on S. 503, a bill to authorize the purchase, sale, and exchange of lands by the Devils Lake Sioux Tribe of the Devils Lake Sioux Reservation, N. Dak., and for other purposes.

We would favor enactment of this legislation, if amended as we have suggested in our report to your committee.

The bill, if enacted, would authorize the Secretary of the Interior to acquire land or improvements within the Devils Lake Sioux Reservation for the Devils Lake Sioux Tribe or individual tribal members.

Trust land within the reservation would be authorized to be sold provided that new trust land of equal area or value would be acquired simultaneously, and trust land could be exchanged for any land within the reservation provided that land values are equal or equalized by payment of money.

The subject bill, if enacted, would also transfer any excess property, as defined by section 3 of the Federal Property and Administrative Services Act, within the reservation from the General Services Administrator to the Secretary of the Interior.

The Secretary would be required to accept any transfer of title from any tribe or any individual tribal member for any land within the reservation and to hold such title in trust for the tribe or the individual tribal members.

All acquisitions, sales, or exchanges made under this bill could be made only at the request of the authorized governing body of the tribe and subject to the tribal constitution.

All land interests, and improvements acquired under this bill would be nontaxable and held free of all charges or encumbrances. Any money or credits received by the tribe or individual tribal member from the sale or exchange of trust land would be used only for acquiring property under this bill.

Individually owned trust or restricted land within the reservation could be leased by Indian owners to the tribe with the approval of the Secretary.

Finally, the bill would prevent a person not a member of the tribe from receiving by devise or inheritance any interest in trust or restricted land within the reservation or the area ceded by the Treaty of February 19, 1867—15 Stat. 505—if, during probate of the decedent's estate, the tribe purchased the interest by paying to the Secretary of the Interior the fair market value of such interest.

If, however, such person were the surviving spouse of the decedent, a life estate on one-half of the interest acquired by the tribe would, upon request of the spouse, be reserved for the spouse.

This legislation is necessary to improve management of the reservation lands and solve heirship problems. The existing statutory authority used by many other tribes to solve these problems is provided by sections 4 and 5 of the Indian Reorganization Act of 1934—48 Stat. 984; 25 U.S.C. 464 and 465.

Under that act, the Secretary of the Interior has the authority to accept gifts of land for tribes and allow exchanges of land, but it does not provide authority for the sale of tribal lands held in trust by the United States.

However, that act does not apply to the Devils Lake Sioux Tribe because, on November 17, 1934, the tribe voted to reject the act—see 25 U.S.C. 478 to 478B.

Enactment of S. 503, with our proposed amendments, would permit consolidation of landholdings, and reduce or eliminate instances of fractional heirship interests in Indian trust lands.

The legislation would also provide land for tribal programs designed to improve the economy of the tribe and its members through the development of industry, recreational facilities, housing, and the general rehabilitation and enhancement of the total resource potential of the reservation.

This concludes my prepared statement. I would be happy to answer any questions you or members of the committee may have.

Senator ANDREWS. I note that while the administration requires a number of changes to be made to the bill, that most of the suggestions are in the nature of a clarification.

However, you have recommended that we amend section 4 of the bill by deleting the words "property and its use shall be nontaxable and held free of all charge or encumbrance whatsoever" and that the words "property shall be exempt from State and local taxation" be inserted in lieu thereof.

You indicate that, as written, the bill may grant the Devils Lake Sioux a tax exemption beyond that which other Indian lands receive. You also indicate that existing Federal law does authorize some encumbrance of individually owned Indian lands.

However, it is also true that under title XXV, U.S. Code, section 348, allotted lands are generally free from encumbrance.

I assume the purpose of your recommendation is that lands taken in trust for the Devils Lake Sioux Tribe, or its members, should be held in the same manner as other Indian lands are generally held.

Would it be better if we simply deleted the reference to taxation and encumbrance and inserted in lieu thereof such language as "and such property shall be held in the same manner as other trusts or restricted Indian lands are held under generally applicable Federal lands"?

Mr. PAYTON. That was generally our point; yes.

Senator ANDREWS. Is that essentially what you are interested in?

Mr. PAYTON. Yes.

Senator ANDREWS. As to section 7 of the bill, you did not say much on that section. As I mentioned earlier, there is some opposition by members of the tribe who have called in.

Do you have any comments on that? Is there anything unique in this legislation that would give rise to these comments? Or could it be just a case of misinterpretation by the people out there?

Mr. VOLLMAN. My understanding, Mr. Chairman, is that this bill is similar to a number of pieces of legislation that have gone forward in the past decade involving other tribes.

We do not see any serious problems with section 7. And we have not heard any objections from the people on the reservation. We

would be interested to hear what those objections are so that we might address them in any further comments.

Senator ANDREWS. I would like to know where the area ceded by the Treaty of February 19, 1867, is situated and the status of this land.

Can you provide that for the record? Or do you have that here?

Mr. PAYTON. I do not believe we have it, but we have a map.

Senator ANDREWS. The committee does not have maps that show that specific land. That is why we wanted to make sure you had that material for the committee. If you can provide a copy, then we would appreciate it.

Mr. PAYTON. We would be glad to.

Senator ANDREWS. Without objection, that will be placed in the record at this point.¹

Last year, the Congress passed an act pertaining to restricting inheritance of trust lands on the Standing Rock Sioux Reservation in North Dakota and South Dakota. But the legislation was much more complete and laid out exactly how the land would pass upon the death of the owner.

How does that legislation compare with section 7 in this bill?

You could provide that analysis for the record, if you prefer; that is, what was done in the bill we passed last year and how it compares with section 7.

Certainly, if section 7 is being questioned because of its affect on people's lives and on their Indian inheritance, then we need a thorough review of this wording by your office. We would appreciate that.

Mr. PAYTON. Certainly; we will be glad to do that.

Senator ANDREWS. Without objection, that will be placed in the record at this point.

[Subsequent to the hearing, the following information was received:]

We recommend that "or within the area ceded by the Treaty of February 19, 1967" be deleted from the bill because there are no restricted or trust lands outside the present day boundary of the Devils Lake Sioux Reservation.

Senator ANDREWS. Senator Burdick has proposed amendments to the bill. I know you have not had much time to look over the amendments, but I would appreciate it if you could send the committee your comments on his amendments as well within the next 15 days, if that is possible.

Mr. PAYTON. I would be glad to.

Senator ANDREWS. Without objection, that material will be inserted in the record at this point.

[Subsequent to the hearing, the following information was received:]

We have no objections to Senator Burdick's proposed amendments.

Senator BURDICK. I would like to clarify section 7, Mr. Chairman. Apparently this is in controversy.

In reading (a), it reads:

A person who is not an enrolled member of the Devils Lake Sioux Tribe shall not be entitled to receive by devise or inheritance any interest in trust or restricted land within the Devils Lake Sioux Reservation or within the area ceded. . . .

¹ Not received at time of printing.

I think that one of you gentlemen just said that this question had been similarly resolved in other cases.

What happens here is that while a person who is not an enrolled member is not entitled to receive an inheritance, he could be entitled to receive the fair market value of his inheritance; would he not?

Mr. PAYTON. Yes.

Senator BURDICK. You could not take his property without some kind of compensation; right?

Mr. PAYTON. That is right.

Senator BURDICK. Do you know of any case holding of any kind that would not support that theory? In other words, the taking of the land for fair value would be upheld; right? Is there any legal objection to this procedure that you know of?

Mr. PAYTON. I am unaware of any, Senator.

Senator BURDICK. It is almost a necessity when you start breaking up inheritances; one dies and leaves six children and the children die and they leave six children; so you can see where it comes out.

There is infinitesimal ownership so there has to be a way to give title to the entire tract. So, my question is this: Is the payment of fair market value to those heirs adequate to meet any constitutional objection?

Mr. PAYTON. I think so; yes.

Senator BURDICK. Thank you.

Senator ANDREWS. One other question, while we are on that subject. As it was pointed out to me in these phone calls, if an Indian marries a non-Indian—that is, an Indian who is a member of the tribe marries a non-Indian—and they have a child, then the Indian spouse dies first, let us say, and the land passes to the surviving non-Indian spouse. The concern is that the child is not protected and will not be able to inherit that land because it then would become tribal land pursuant to section 7.

That, as I understand it, is the question that has been raised. The Indian member of the tribe wants to protect, for his or her child, the opportunity to inherit the non-Indian's interest in acres which that particular Indian has.

There is a good deal of feeling for the tribal lands and for the home lands among the members of the Devils Lake Sioux Tribe. If an Indian parent has 25 or 40 acres, you could have the law operating so that if the Indian parent died first, the child could inherit not the 25 or 40 acres, but only half of the land acreage. That is the question.

We would appreciate your comments on that specific point.

Mr. PAYTON. We will be glad to.

[Subsequent to the hearing, the following information was received:

Although S. 503 is similar to the Act of June 17, 1980, Public Law 96-274, 94 Stat. 573, which affected the Standing Rock Sioux Reservation, there is an important distinction. Section 7 of S. 503 provides that only enrolled members of the Devils Lake Sioux Tribe can inherit interests in trust or restricted land within the Devils Lake Sioux Reservation, while section 2 of the 1980 Act provides that persons who are (1) enrolled members of the Standing Rock Sioux Tribe; (2) members of a Federally recognized tribe; or (3) otherwise recognized as Indians by the Secretary of the Interior may inherit interests in trust or restricted land within the Standing Rock Sioux Reservation.

Section 7 of S. 503 provides that a nonmember surviving spouse may be granted life estate in one half of any interest in trust or restricted land left by the Indian decedent. This provision is found in section 4 of the 1980 Act.

Section 3 of the 1980 Act provides a more detailed line of succession of eligible Indian heirs left by Indian dying intestate. This establishes uniform descent laws for the Standing Rock Sioux Tribe. This was desirable for the Tribe because under existing Federal law, North Dakota law of inheritance applies to those parts of the reservation in North Dakota and South Dakota law applies to the remainder of the reservation. Since the descent laws of both States differ substantially, the 1980 Act eliminated much of the inequity and confusion created by the previous situation. Because the Devils Lake Sioux Tribe is located entirely in one state, this problem does not exist.

Senator ANDREWS. When you get to the problem of fractionating Indian lands, a problem which Senator Burdick has wisely pointed out, no one has a better friend of native Americans than Senator Burdick.

As Senator Burdick has pointed out, one of the purposes of the bill is to make sure that we do not have the problems of fractionated heirships which plague many reservations; where tenths of acres and thirds of acres pass to children and the ownership interests become a nightmare to administer.

We appreciate your testimony very much.

Next, we will hear from Mr. Robert Pirtle of Seattle, Wash., who is special counsel for the Devils Lake Sioux Tribe.

With Mr. Pirtle is Warren Sogard of Fargo, N. Dak., an attorney for the Devils Lake Sioux Tribe.

Please proceed.

**STATEMENT OF ROBERT L. PIRTLE, SPECIAL COUNSEL FOR THE
DEVILS LAKE SIOUX TRIBE, ACCOMPANIED BY WARREN SO-
GARD, ATTORNEY FOR THE DEVILS LAKE SIOUX TRIBE**

Mr. PIRTLE. Thank you, Senator.

I would like to express my appreciation for being here today and being able to testify on behalf of the Devils Lake Sioux Tribe.

I would like to say that, as the tribal attorney for a number of tribes in a number of States, I can talk with real pride to the esteem with which the people of the State of North Dakota and the congressional people hold their tribes.

I know that in all of Indian country, it is a well-known fact that the relationship between the Indian tribes of North Dakota and the State of North Dakota and the people of North Dakota is well known and is considered to be a landmark in tribal State relations.

It is one that many other Indian tribes envy.

I have filed with the committee my formal testimony and would like to ask that be made a part of the record.

Senator ANDREWS. Without objection, it will be placed in the record at this point.

[The statement follows:]

TESTIMONY REGARDING S. 503 BY ROBERT L. PIRTLE, OF ZIONTZ, PIRTLE, MORISSET, ERNSTOFF & CHESTNUT, SPECIAL COUNSEL FOR THE DEVILS LAKE SIOUX TRIBE, N. DAK.

1. GENERAL PURPOSES OF ACT

As special counsel for the Devils Lake Sioux Tribe of the State of North Dakota, I wish to thank the Senate Select Committee on Indian Affairs for this opportunity of testifying on behalf of the Devils Lake Sioux Indian Tribe in favor of the enactment of S. 503, the Devils Lake Sioux Land Consolidation Bill.

Like many other outstanding Indian tribes, the Devils Lake Sioux Tribe is currently engaged in a vigorous pursuit of self-determination and a program of economic development both for the Tribe and for its enrolled tribal members. Again, like many Indian tribes, the Devils Lake Sioux Tribe finds that under general principles of Federal Indian law it does not possess the necessary authority to purchase, sell, and exchange lands inside the Devils Lake Sioux Reservation. As a corollary, and upon the same legal basis, tribal members are also precluded from sale or relinquishment of their trust allotments on the Reservation even for purposes of exchanging them for other lands more convenient or suitable to farming, ranching, or other economic use.

Because the Devils Lake Sioux Tribe voted to reject the Indian Reorganization Act of 1934, 48 Stat. 984, the Secretary of the Interior is not authorized to take lands inside the Reservation in trust for the Tribe under 25 U.S.C. § 465. Therefore the only legal authority upon which the Tribe could rely for the taking of land in the Reservation in trust is the Indian Financing Act of 1974, 25 U.S.C. § 451 et seq., or the standard language included in annual appropriations acts of the Department of the Interior, which typically reads as follows:

"In addition to the tribal funds authorized to be expended by existing law, there is hereby appropriated not to exceed [a stated amount] from tribal funds not otherwise available for expenditure for the benefit of Indians and Indian tribes, including . . . purchase of land and improvements on land, title to which shall be taken in the name of the United States in trust for the tribe for which purchased. . . ."

Department of the Interior Appropriations Act, Fiscal Year 1981, Public Law No. 96-514, 94 Stat. 2957, 2967 (1980).

But neither of these legal sources is sufficient to provide the certainty and flexibility needed by the Devils Lake Sioux Tribe in the area of land management. In the first place, the Indian Financing Act provides no authorization for taking land in trust purchased with moneys which are not borrowed pursuant to that Act from the revolving loan fund. And because the revolving loan fund is small in amount and subject to the demands of so many tribes, it does not realistically provide any possibility for the Tribe as a resource. Further, neither of these two sources provides the Tribe with the authority to purchase land through the device of a purchase money mortgage or a real estate contract. Yet because the Devils Lake Sioux Tribe has limited resources, it may well encounter situations in which it has land purchase opportunities only if it purchases land upon a real estate contract or subject to a purchase money mortgage.

Another major land problem which the Devils Lake Sioux Tribe faces is the problem faced by most other Indian tribes whose reservations contain allotted trust lands, namely the problem of fractionated heirship interests. Congress is well aware of the fact that the mere passage of time itself has resulted in some trust allotments being owned by literally thousands of owners such that no realistic economic use of the land can be made. On the other hand, no general legal authority exists which would enable the Secretary of the Interior or Indians themselves to dispose of fractionated heirship interests. Nor does any legal authority exist which would allow tribal governments to solve the fractionated heirship problem on their own reservations on a general basis.

S. 503 is designed to alleviate all of the foregoing problems at once. It is founded upon the central premise that the concept of trust land is the foundation stone of land development both by Indian tribes and tribal members. A corollary principle embodied in S. 503 is the principle that the Secretary of the Interior supervise and regulate trust land transactions regarding the tribe and its tribal members within the ambit of the federal trust responsibility to American Indians. The bill specifically vests the Secretary with discretion to control the varied land transactions it authorizes in a manner flexible enough to insure that both the Tribe and tribal members may increase, decrease or adjust trust landholdings as the exigencies of farming, ranching or other economic development of land dictate.

The central purpose of the Devils Lake Sioux Land Consolidation Bill is to consolidate land ownership patterns within the Reservation in order to maximize utilization of the Reservation land base. The bill would authorize the Secretary of the Interior (1) to acquire and hold in trust for the Tribe and tribal members land within the Reservation, (2) to sell or exchange tribal or individual trust land in situations in which new trust land of approximately equal area or value is acquired, and would authorize the Tribe (1) to enter into long-term leases of indi-

vidually-owned trust land within the Reservation, and (2) to acquire any interest in trust land within the Reservation which a person not an enrolled member of the Tribe would be otherwise entitled to receive by device or inheritance.

Thus the broad purposes of the bill serve not only a land consolidation purpose but promise a partial solution to the fractionated heirship interest problem.

2. HISTORY OF THE DEVILS LAKE SIOUX RESERVATION

The Devils Lake Sioux Reservation was established by the Treaty of February 19, 1867 and since that time has been the permanent home of the Devils Lake Sioux Tribe. The Reservation is bounded on the north by Devils Lake, on the south by the Sheyenne River, and extends east and west to either end of Devils Lake. During the 30 years following the ratification of the Treaty, much Reservation land was allotted in trust to individual members of the Tribe and, by the Act of April 27, 1904, unallotted Reservation lands were opened for settlement by non-Indians. Some allotted land eventually passed out of trust status into non-Indian ownership. As a result of these processes, Indian trust land, both tribal and individual, is interspersed throughout the Reservation in a checkerboard pattern with non-Indian owned land. This checkerboard pattern of land ownership makes economic use of the land difficult.

The Reservation is approximately 30 miles long and averages 15 miles in width. Of its 245,141 acres, 23,367 acres are tribally owned, 53,500 are individual Indian trust allotments and 168,274 are owned in fee by non-Indians. The 1979 population of the Reservation was 3,320 of which approximately 2,790 are Indians.

3. FLEXIBILITY OF S. 503

Section 1(a) of S. 503 authorizes the Secretary to purchase "with any funds" any land or any interest in land or any improvements on land inside the boundaries of the Reservation either for the Tribe or tribal member. Accordingly, the Secretary is not bound by any limitation upon the source of funds used for the purchase of trust land.

However, § 3 of the bill makes all land acquisitions, sales, or exchanges dependent upon a request of the governing body of the Devils Lake Sioux Tribe; accordingly, the Secretary may not sell, acquire or exchange tribal or individual trust lands or fee lands inside the Reservation without direct action of the Devils Lake Sioux Tribal Council. Such a provision is consistent with the federal principle of Indian self-determination and serves as a safeguard against land transactions unwanted by the Tribe or inconsistent with its land consolidation program.

Further, the Secretary is not limited to the purchase of a fee simple title to land; instead he may purchase any interest in land or any improvements on land. This broad language means, for example, that the Secretary might purchase a life estate in land, water rights to land, or might utilize any of a number of legal devices for the purchase of land interests such as a purchase money mortgage, a real estate contract or a deed of trust.

The section also authorizes the Secretary to sell tribal or individually-owned trust land, provided that any such sale be accompanied by a simultaneous acquisition of other trust land. This provision specifically addresses the problem of sale of non-arable trust land in order to facilitate the purchase of arable trust land or in order to consolidate farming units to render a non-profitable farming operation profitable or in order to allow an inadequate parcel of land to be enlarged for some other economic development purpose.

Finally, the section authorizes the Secretary to make exchanges of trust lands. The three sections taken together therefore constitute authority for the Secretary to allow tribal trust land to pass from individual ownership to tribal ownership and vice versa, a process whose economic utility both to the Tribe and to individuals is readily apparent. This provision is particularly important in light of the tribally-owned experimental farm.

Section 1(b) directs that the General Services Administrator shall transfer to the Secretary of the Interior any land or interest in lands or improvements thereon inside the Reservation which are declared to be excess property as defined in § 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. § 472(e)). Thus any federally-owned land inside the Reservation which is not held in trust for the Tribe or individual tribal members and which is declared to be excess property shall revert to its rightful owner.

Section 6 of the bill provides that individual Indian owners of trust land inside the Reservation may lease their trust land either to the Tribe or its subordinate organizations for public, religious, educational, recreational, residential or business purposes including farming and grazing purposes. The lease authority included in this section may extend for a term as long as 99 years and provides a needed alternative to outright sale or exchange of trust land.

The fractionated heirship interest problem is addressed by sections 7 and 8 of the bill which, in essence, provide the Devils Lake Sioux Tribe with the right to purchase any interest in trust land on the Reservation which is subject to ownership by a non-tribal member through devise or inheritance. The mechanism through which this opportunity is afforded is a requirement that the Examiner of Inheritance keep an estate pending for two years from the date of decedent's death to enable the Tribe to make arrangements for such a purchase. However, this right is limited by the right of the surviving spouse of a decedent to reserve a life estate on one-half any such interest, thus assuring that any such spouse will not be ejected from the family home.

4. SOURCES OF S. 503

The provisions of S. 503 do not represent a radical change from Congress treatment of land consolidation and fractionated heirship interest problems of Indian tribes in the past. Rather, they stem from a number of similar acts which Congress has passed for specific reservations in the last three decades, namely, Public Law 84-188, 69 Stat. 392 (1955), 25 U.S.C. section 608, Public Law 91-627, 84 Stat. 1874, 25 U.S.C. section 601-607 (1970), Public Law 88-540, 78 Stat. 747, 25 U.S.C. section 608 (1964), for the Yakima Indian Tribe; Public Law 90-335, 82 Stat. 174, 25 U.S.C. section 487 (1968), and Public Law 99-335, 82 Stat. 174 (1974), for the Spokane Indian Tribe; Public Law 90-534, 82 Stat. 884, 25 U.S.C. section 610 (1968), for the Swinomish Indian Tribal Community; and Public Law 93-491, 88 Stat. 1468 (1974), for the Sisseton and Wahpeton Sioux Tribes of the Lake Traverse Reservation.

5. COSTS

Enactment of this bill will involve no federal cost.

6. CONCLUSION

Enactment of S. 503 by the 94th Congress will serve to strengthen self-determination of the Devils Lake Sioux Tribe by giving the Tribe the benefit of the legal ability to acquire, sell and exchange land inside the boundaries of the Reservation in the same manner as other American Indian tribes under the provisions of section 5 of the Indian Reorganization Act of 1934, 48 Stat. 984, 25 U.S.C. section 465, or the Indian Financing Act of 1974, 25 U.S.C. section 1451 *et seq.*, or under special statutes providing for individual tribes, or lastly, under the standard language included in annual appropriation acts of the Department of the Interior. Enrolled tribal members will also have legal authority to acquire, sell and exchange individually-owned trust land as well as the ability to lease it to the Tribe for terms of up to 99 years.

In particular, S. 503 will enable the Tribe to eliminate the fractionated heirship problem of individually-owned trust land inside the Reservation. In giving the Tribe such powers to strengthen its land base, Congress will affirm the federal national Indian policy of self-determination and provide the Tribe with a much needed tool for its future agricultural, economic and social progress.

Mr. PIRTLE. By way of saving time, I will say this. I think the areas are generally covered in my testimony that are of interest to Senator Burdick and to tribal people here, so I am available for answering questions that the Senators might have.

Senator ANDREWS. Thank you.

I assume you have heard my question regarding section 7, which I addressed to the administration. Do you have any comments on this inheritance restriction and the way it compares with the Standing Rock Sioux legislation? Although I realize that you may not have had an opportunity to look at that yet, I thought you might be well

aware of the legislation because of your long-time knowledge of Indian law.

Mr. PIRTLE. As a matter of fact, I have just become aware of this. I have not had a chance to study it. I know that in the area of inheritance, Indian tribes face a difficult problem.

The problem is one of trying to find a balance somehow between the need to keep tribally and individually owned trust lands in trust for a permanent land base for the tribe and its enrolled members and to try to determine what to do about the inheritance problem of children of tribal members who have themselves not been tribal members.

It is a very difficult problem. The tribes are making a choice generally as a value judgment by the tribal judgment councils that it is more important that the land base be retained in trust than individual children of enrolled members who themselves are not enrolled members taking small fractional shares of land.

That was the genesis of this section of the statute. As you know, it has appeared in a number of other statutes in the past.

The council's feeling is that there may be a little bit of a problem here with lack of communication with some people who raised objections yesterday and the day before.

Their intention is to go back to the reservation and see that this matter is thoroughly aired and considered by the people at large. Then the council itself will come back to the committee with recommendations of either change or to proceed, or to adopt some language which I understand in the other act and which is favorable language and should be included.

Senator ANDREWS. As a matter of fact, Mary Jane Wrenn, from the committee staff, will be in North Dakota and will visit the reservation with Mr. Sogard, who is the tribal counsel.

We want to make sure that everyone has a chance to be heard. You may be right that there is a misunderstanding out there which can be ironed out. We want to make sure that the committee has accurate information and that the people's right to be heard is totally protected.

Do you know how much land is held by the tribe now in fee title?

Mr. PIRTLE. I think Mr. Sogard can give you the exact figures.

Mr. SOGARD. Yes, Mr. Chairman. The reservation itself encompasses 645,141 acres of which the Devils Lake Sioux Tribe owns 63,367 acres. Most of that is in trust. It is a small part that is not.

A further 53,500 acres is owned in individual Indian trust allotments. The rest of the reservation is owned in general by non-Indians although there is some fee-land which is owned by Indians.

So, roughly a little over a third of the reservation is in trust in some manner, either for the tribe or for individual Indians and the rest is in the fee status.

Senator ANDREWS. Where is the land which was ceded, that I asked about a moment ago, by the Treaty of February 19, 1867? How is that land currently held?

Mr. SOGARD. It would have passed and would be held in fee by non-Indians. That would have most likely been placed into the category of homesteading, and yours and my ancestors, Senator, undoubtedly homesteaded on it.

Senator ANDREWS. Is there any reservation that has been declared excess property pursuant to the Federal Property Administrative Services Act of 1949?

Mr. SOGARD. Our researchers indicate there is no excess property currently in the reservation.

Senator ANDREWS. Is there a possibility that any of the land would be declared excess?

Mr. SOGARD. Yes, there is a possibility. There are some very small pieces of property. It is my understanding that it is an amount that is under 20 acres.

None of our ancestors, when the reservation was open to homesteading, thought it was worth homesteading on. So, it essentially has sat with the Government.

If this bill passes, it would be the intention of the tribe to move forward to ask that land be declared surplus and then transferred to the tribe.

Senator ANDREWS. Do you have any comments on the administration's suggested amendments?

Mr. SOGARD. Excuse me?

Senator ANDREWS. Do you have any comments on the administration's suggested amendments—that is, the amendments that were mentioned briefly by the administration?

Mr. SOGARD. I believe Mr. Pirtle and I, in discussions before this testimony, have determined that essentially the suggestions that the administration has made are helpful and consistent with the purposes of the bill.

We would have no difficulty with what has been outlined.

Senator ANDREWS. That is what we wanted to nail down. That is the sequence of these hearings. We want to make sure that when the administration comes up and suggests changes to the bill, and, obviously any piece of legislation can be improved upon, that those of you who represent the tribe have taken a look and have had an opportunity to express your views.

So your testimony is that this change in language would be helpful.

I also assume that the suggestions which Senator Burdick has for amendments meet with your approval then? We assume that because of the closeness with which our congressional delegation works with you.

Mr. SOGARD. That is true. We are most appreciative of the help that we have received from the committee staff and from the Senator's staff. We greatly appreciate that.

Both the amendments that Senator Burdick has offered are completely consistent with our thinking.

Senator ANDREWS. Senator Burdick?

Senator BURDICK. I have a question and an observation. I direct this to both lawyers.

This relates to the section 7 question. I asked the Department witnesses a moment ago whether there was any constitutional difficulty with the fact that you have an interest in a bit of land. There is one-sixty-fourth of it. This is not unusual. It does fractionate that much.

I wonder whether the owner of that one-sixty-fourth is entitled to his land rather than the money.

I have just been handed a quotation here by staff indicating this question has been decided in the U.S. Supreme Court in the case of Yakima Tribal Council, *Simmons v. Yakima Council*, quoting that to be legal.

Do you have any other comments?

Mr. PIRTLE. I was going to advise the committee that I would consider that eminently legal and clearly constitutional, because, what it would do would, in a sense, be in the nature of a condemnation of a fractional interest of land. And, the money for the land in its true value would then go into the estate and the assets of the estate would be probated and distributed according to Federal statute and the State statute. That certainly would be legal.

Senator BURDICK. Apparently the *Yakima* case decided it, then?

Mr. PIRTLE. Yes.

Senator BURDICK. Thank you.

Mr. PIRTLE. Let me make one comment, Mr. Chairman.

I would second what Mr. Sogard said concerning the amendments that are proposed by the administration. We know that anytime you get a bill of this kind that it is inevitable—when you get the expertise of the administrative staffs looking at it and the staff of the committee here—that you find a number of housekeeping amendments and things that need to be done to keep the statute cleaned up.

The full benefit can then be obtained by the tribe as that legislation itself is amended and improved upon.

Senator ANDREWS. I would now like to welcome our next witnesses. We finally get down to the most important ones of the day, the representatives of the Devils Lake Sioux Tribe and the tribal members, Frank Myrick and Bernice Juarez.

Welcome to the committee. We will be glad to hear any testimony that you might have.

Mr. SOGARD. If I may, by way of introduction, let me say that it was the intention of the chairman of the tribe, Carl McKay, to make a prepared statement which has been furnished to staff.

Mr. McKay currently is a first-year law student at the University of North Dakota. I personally know what a complicated process that first semester is.

As a result, he missed the plane. So, Bernice Juarez, a fine member of the tribal council, will read into the record the statement of Mr. McKay.

Senator ANDREWS. We can understand the problem. May I also point out that during the campaign just passed, there were a lot of comments made about my leaving the important House Appropriations Committee to move over into the Senate.

But during all of the campaign, the only request that I had from any of my constituents back in North Dakota was when I got to Fort Totten; Mr. McKay and the tribal council suggested that I seek a seat on the Select Committee on Indian Affairs when I got to the Senate.

So I have. It is the appointment which I was requested to seek by my constituents. I am glad to be here at your suggestion. We are glad to welcome you here.

We only wish that Carl was here also, but we can understand his problems. We know that he is adequately represented by the two members of the tribal council who are here.

STATEMENT OF CARL R. McKAY, CHAIRMAN, DEVILS LAKE SIOUX TRIBE, AS READ BY BERNICE JUAREZ, COUNCIL MEMBER, DEVILS LAKE SIOUX TRIBE; ACCOMPANIED BY FRANK MYRICK, COUNCIL MEMBER, DEVILS LAKE SIOUX TRIBE

Ms. JUAREZ [reading]. Thank you, Mr. Chairman.

It has been my privilege and honor to serve as the Chairman of the Devils Lake Sioux Tribe from May of 1974 until the present time.

During my tenure as Chairman, the Devils Lake Sioux Tribe has embarked upon a program which I believe will lead to greater economic development for the members of my Tribe.

I believe that the only way the Devils Lake Sioux Tribe can go forward into the future with hope for betterment and economic self-sufficiency for Indian people, is for the Tribe and the Indian community located on the Devils Lake Sioux Reservation to become economically self-sufficient.

Our program to accomplish this goal has two components. The first component deals with the bringing to the Devils Lake Sioux Reservation jobs so that our Tribal members have the opportunity to work in meaningful jobs.

The Tribe, through the Devils Lake Sioux Manufacturing Corporation, has made significant headway in insuring that there is an opportunity for employment for those Tribal members that wish to take advantage of this opportunity to work.

The second component of our plan for economic self-sufficiency returns to the stated purposes of our Treaties and Agreements with the United States in establishing our Reservation.

My understanding of our Treaties and Agreements with the United States, is to establish a permanent homeland where Indian people can work their land to enjoy the fruits of their labors.

Therefore, it has been my top priority to see that Indian lands within our Reservation are used and managed properly and allow Indian farmers and ranchers the opportunity to farm and ranch.

The last 6 years has seen a great increase in the amount of Tribally-owned land on our Reservation. Currently, of our Reservation's 245,141 acres, the Devils Lake Sioux Tribe owns 23,367. A further 53,500 acres are owned in individual Indian trust allotments.

The rest of the Reservation is owned in fee by non-Indians. The population of the Reservation in 1979 was 3,320 of which approximately 2,790 are Indians.

The Devils Lake Sioux tribe has embarked upon a land acquisition program because we realize that the only way our Tribal members will have the opportunity to farm or ranch on the Reservation is to build up our Indian owned land base.

That is why the amount of Tribally-owned land has increased from almost zero to the present 23,367 acres. We have a long road ahead of us if we are to insure our children the opportunity to work their own land.

The purpose of Senate Bill 503 is to assist the Devils Lake Sioux Tribe in its land acquisition program and its attempt to obtain economic self-sufficiency. We find that our Tribal programs are being frustrated because under present law the Tribe can acquire land within its Reservation, but the title may not be taken into trust without Congressional authorization.

Tribal land cannot be sold or exchanged without special legislation in each case. We need more flexibility to pursue our land acquisition goals so that we can consolidate our Indian land holdings into larger, more economically usable blocks.

This is what I see Senate Bill 503 helping us to accomplish. I see passage of this crucial legislation as a great aid to our Tribal goals.

I want to thank Senator Quentin N. Burdick and Senator Mark Andrews for their assistance and help so far in this legislative process. Both these fine gentlemen have worked with the Tribe in attempting to pursue our goal of economic viability.

Senate Bill 503 with the amendments presented by Senator Burdick go a long way in making the Devils Lake Sioux Tribe more effective in meeting its people's needs for economic opportunity in the future.

I respectfully ask that the Select Committee on Indian Affairs take positive action in passing this much needed, useful piece of legislation.

Senator ANDREWS. Thank you for an excellent presentation of the chairman's statement.

Let me ask one question for the record. What are the requirements for membership in the Devils Lake Sioux Tribe?

Ms. JUAREZ. One-fourth Devils Lake Sioux blood.

Senator ANDREWS. One-fourth Devils Lake Sioux blood as tied back to the original rolls?

Mr. SOGARD. That is correct.

Senator ANDREWS. You heard earlier the comments we made about the tribal members who called the committee staff about section 7. There appears to be some misunderstanding and some concern about the inheritance restriction.

They issued their concern in line with the statement that they were not aware of the language of the bill.

Have you met with the members of the tribe to discuss the bill?

Ms. JUAREZ. Yes, we have met with them.

Senator ANDREWS. When?

Mr. SOGARD. If I may, Senator, let me say this. The tribe, as a matter of their constitution, has a meeting once a month. It is called the general assembly meeting; tribal matters generally are discussed there.

In the course of the life of this bill, which now has basically been over 1 year, I personally have been to several general assemblies. They have discussed this with the council members on a number of occasions. It has been discussed frequently in council.

But I would just note for the Senator that, like these committee meetings, those are not necessarily well attended. It is only the general assembly where you would get a broad distribution of information to the community.

It would appear that we still have not reached far enough. In furtherance of that, I have been instructed by the council members here—and I am certain when I get back in North Dakota—and by the full council, that when the members of the staff come to North Dakota, we will have a general session at that time which will be able to lay out further our discussions to anybody who has any questions about the bill.

Senator ANDREWS. So the committee can be assured that this legislation was discussed in general assembly meetings and any member of the tribe who did not hear about the bill probably was not at the assembly meeting; right?

Has it been discussed at more than one meeting?

Mr. SOGARD. Yes; that is right. It is my understanding that copies of the bill have been furnished to many tribal members in the past. So I suspect the questions will come up.

Senator ANDREWS. Let me ask one follow-on question. Is the tribal council in full agreement on this bill?

Ms. JUAREZ. Yes.

Senator ANDREWS. So the tribal council unanimously supports the bill?

Ms. JUAREZ. Yes.

Senator ANDREWS. Thank you very much for your statement.

Senator Melcher is here. Senator Melcher, do you have any comments?

Senator MELCHER. Mr. Chairman, I do not have any questions. I am just catching up on the propositions. So I would ask you to give me a moment to look it over.

Senator ANDREWS. I understand that Mary Jane Wrenn, staff attorney, has been in contact with the tribal attorney and will be on the reservation within the next 10 days. By that time you will have had plenty of time to discuss this bill with the members and can iron out any difficulties.

Mr. SOGARD. That is correct. I believe the tribal council has scheduled its meeting so that Ms. Wrenn and the tribal council can meet together.

Senator ANDREWS. One of the things I have learned through the years I have been privileged to serve North Dakota is that if you let the North Dakota people be heard, then you can only benefit by their ideas.

I think that your being out there, Mr. Sogard, will give us a big boost so that we will make sure we have the input and get the best possible bill for those people.

Senator BURDICK, any questions?

Senator BURDICK. Not unless they brought up something new.

Senator ANDREWS. Nothing new. Everything has been moving along quite well.

Senator MELCHER. Mr. Chairman, let me say this: We passed a similar bill for the Standing Rock Sioux Reservation last year. I am sympathetic to solving this problem through S. 503 if it meets with the approval of the tribe.

Senator ANDREWS. I appreciate the Senator's comments.

If there are no other questions, then that concludes the hearing. We thank you all very much for your cooperation and for the helpful remarks that you have made.

We stand adjourned.

[Whereupon, at 10:55 a.m., the hearing was adjourned.]

